

## MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT

## SENTENCE BY A PERSON IN FEDERAL CUSTODY

<b>United States District Court</b>	District S.D. W. VA, Charleston
Name ( <i>under which you were convicted</i> ): Daymeon D. Johnson	Docket or Case No.: 2:16-cr-00163-1
Place of Confinement: FCI Butner II	Prisoner No.: 14368-088
UNITED STATES OF AMERICA V.	Movant ( <i>include name under which convicted</i> ) Daymeon D. Johnson

**FILED**

SEP 11 2019

RORY L. PERRY II, CLERK  
U.S. District Court  
Southern District of West Virginia**MOTION**

1. (a) Name and location of court which entered the judgment of conviction you are challenging.

Southern District of West Virginia, Charleston

(b) Criminal docket or case number (if you know): 2:16-cr-00163-1

2. (a) Date of the judgment of conviction (if you know): 5/9/17

(b) Date of sentencing: 4/4/17

3. Length of sentence: 168 mths

4. Nature of crime (all counts): Ct-1 Conspiracy to distribute a quantity of heroin  
Ct-2 Distribution of a quantity of heroin

5. (a) What was your plea? (Check one)

(1) Not guilty  (2) Guilty  (3) Nolo contendere (no contest) 

(b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or what did you plead guilty to and what did you plead not guilty to?

Plead guilty to count 1 and all others were dismissed

6. If you went to trial, what kind of trial did you have? (Check one) Jury  Judge only

7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes  No

8. Did you appeal from the judgment of conviction? Yes  No

## 9. If you did appeal, answer the following:

- (a) Name of court: 4th Circuit of Appeal
- (b) Docket or case number (if you know): 18-4082
- (c) Result: Affirmed
- (d) Date of result (if you know): 10/5/18
- (e) Citation to the case (if you know): 738 Fed App'x 802
- (f) Grounds raised: The court erred in sentencing

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(g) Did you file a petition for certiorari in the United States Supreme Court?

Yes No 

If "Yes," answer the following:

(1) Docket or case number (if you know): NA

(2) Result: \_\_\_\_\_

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(3) Date of result (if you know): \_\_\_\_\_

(4) Citation to the case (if you know): \_\_\_\_\_

(5) Grounds raised: \_\_\_\_\_

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NA

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10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications, concerning this judgment of conviction in any court?

Yes  No

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: NA

(2) Docket or case number (if you know): \_\_\_\_\_

(3) Date of filing (if you know): \_\_\_\_\_

(4) Nature of the proceeding: \_\_\_\_\_

(5) Grounds raised: \_\_\_\_\_

NA

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(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes  No  NA

(7) Result: \_\_\_\_\_

(8) Date of result (if you know): \_\_\_\_\_

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: \_\_\_\_\_

(2) Docket of case number (if you know): \_\_\_\_\_

(3) Date of filing (if you know): \_\_\_\_\_

(4) Nature of the proceeding: \_\_\_\_\_

(5) Grounds raised: \_\_\_\_\_

NA

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(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes  No

(7) Result: NA

(8) Date of result (if you know): \_\_\_\_\_

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes  No

(2) Second petition: Yes  No

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

NA

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12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

**GROUND ONE:** The Sentence was imposed in violation of the US Constitution and laws thereof and Requires the Resentencing

- (a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

See attached brief

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**(b) Direct Appeal of Ground One:**

- (1) If you appealed from the judgment of conviction, did you raise this issue?

Yes  No

- (2) If you did not raise this issue in your direct appeal, explain why:

Counsel failed to file a Merits brief and raise

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**(c) Post-Conviction Proceedings:**

- (1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes  No

- (2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: NA

Name and location of the court where the motion or petition was filed:

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Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

NA

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- (3) Did you receive a hearing on your motion, petition, or application?

Yes  No  NA

- (4) Did you appeal from the denial of your motion, petition, or application?

Yes  No  NA

- (5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes  No  NA

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

NA

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available):

NA

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: Counsel failed to file and raise

**GROUND TWO: The sentencing and appeal counselors were both ineffective**

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

See attached brief

**(b) Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes  No

(2) If you did not raise this issue in your direct appeal, explain why:

4th Circuit standards requires the IAC to be raised in 2255

**(c) Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes  No

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: NA

Name and location of the court where the motion or petition was filed:

NA

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available):

NA

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(3) Did you receive a hearing on your motion, petition, or application?

Yes  No  NA

(4) Did you appeal from the denial of your motion, petition, or application?

Yes  No  NA

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes  No  NA

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

NA

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available):

NA

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(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: Claims of IAC are properly raised on 2255 forums

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**GROUND THREE:** NA

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(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

NA

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**(b) Direct Appeal of Ground Three:**

- (1) If you appealed from the judgment of conviction, did you raise this issue?

Yes  No

- (2) If you did not raise this issue in your direct appeal, explain why:

NA

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**(c) Post-Conviction Proceedings:**

- (1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes  No

- (2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: NA

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

NA

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- (3) Did you receive a hearing on your motion, petition, or application?

Yes  No  NA

- (4) Did you appeal from the denial of your motion, petition, or application?

Yes  No  NA

- (5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes  No  NA

- (6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

NA

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(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:  
NA

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**GROUND FOUR:** \_\_\_\_\_ NA

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):  
NA

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**(b) Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes  No  NA

(2) If you did not raise this issue in your direct appeal, explain why:  
NA

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**(c) Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes  No  NA

(2) If you answer to Question (c)(1) is "Yes," state:  
Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed:  
NA

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available):  
NA

(3) Did you receive a hearing on your motion, petition, or application?

Yes  No  NA

(4) Did you appeal from the denial of your motion, petition, or application?

Yes  No  NA

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes  No  NA

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

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Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available):

NA

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(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

NA

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13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

Counsel failed to raise

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14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the you are challenging? Yes  No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

NA

15. Give the name and address, if known, of each attorney who represented you in the following stages of the case you are challenging:
- (a) At the preliminary hearing:

John McGhee

- 
- (b) At the arraignment and plea:

same

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- (c) At the trial:

NA

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- (d) At sentencing:

same

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- (e) On appeal:

John Carr

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- (f) In any post-conviction proceeding:

NA

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- (g) On appeal from any ruling against you in a post-conviction proceeding:

NA

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16. Were you sentenced on more than one court of an indictment, or on more than one indictment, in the same court and at the same time? Yes  No

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes  No

- (a) If so, give name and location of court that imposed the other sentence you will serve in the future:

- 
- (b) Give the date the other sentence was imposed:

- (c) Give the length of the other sentence:

- (d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes  No

NA

18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.\*

The petitioner's Direct Appeal was not made final until Oct. 2018 and therefore, he is timely filed.

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\* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of –

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

AO 243 (Rev. 01/15)

Therefore, movant asks that the Court grant the following relief:

To Vacate the Sentence and remove the Additional Findings, as well as  
Grant the Resentencing and 2 Evidentiary Hearings

or any other relief to which movant may be entitled.

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NA

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on 9 / 9 / 2019  
(month, date, year)

Executed (signed) on 9 / 9 / 2019 (date)

  
Mr. Daymeon D. Johnson  
Signature of Movant #14368-088

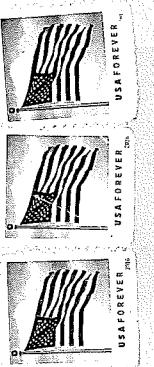
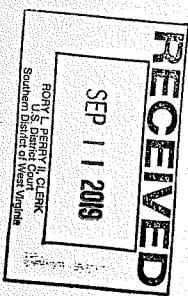
If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.

NA

Mr. Daymeon D. Johnson  
Fed No. 14368-088  
FCI Butner II  
Federal Correction  
Institution  
PO Box 1500  
Butner, NC 27509

Legal Mail

14368-088  
Robert C Byrd US Courthouse  
300 Virginia STE  
ROOM 2400  
Charleston, WV 25301  
United States



SACRAMENTO, NOV 27<sup>th</sup> 1922

G. L. G.

Dear Sirs:

I am enclosing herewith a copy of the letter I addressed to you on November 25<sup>th</sup> 1922, concerning the sale of my property at 1000 1/2 K Street, Sacramento, California.

Very truly yours,

G. L. G.